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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
Implementation of Sections 3(n) and 332)
of the Communications Act)

GN Docket No. 93-252

Regulatory Treatment of Mobile Services)

REPLY COMMENTS OF METRICOM, INC.

Metricom, Inc. ("Metricom"), by its attorneys, pursuant to Section 1.415(c) of the Commission's rules, hereby submits its Reply Comments in the above-captioned Notice of Proposed Rulemaking ("Notice").

A. UNLICENSED PCS AND PART 15 SERVICES ARE NEITHER "COMMERCIAL MOBILE SERVICES" NOR "MOBILE SERVICES" AS THOSE TERMS ARE DEFINED AND USED IN AMENDED SECTIONS 3(N) AND 332 OF THE COMMUNICATIONS ACT.

1. In Comments which were filed on November 8, 1993, Metricom demonstrated that the amendments made to the Communications Act of 1934 ("Communications Act") by the Omnibus Budget Reconciliation Act ("OBRA") do not apply to either unlicensed personal communications services ("PCS") or unlicensed services operating pursuant to Part 15 of the Commission's rules ("Part 15 Services").^{1/} Unlicensed PCS and Part 15 Services are not mobile services because a "mobile service" is defined to include "any

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^{1/} See Comments of Metricom.

service for which a license is required in a personal communications service... ."2/

2. Of the approximately 80 Comments filed in this proceeding, only one commenter -- United States Telephone Association ("USTA") -- even suggests that unlicensed PCS should be classified as a mobile service.^{3/} USTA asserts that unlicensed PCS should be classified as either commercial or private mobile services, based on how the services are offered. However, USTA does not provide any justification for its statement. That is because no justification exists. Moreover, USTA's assertion is inconsistent with the statutory language of the Communications Act as amended by OBRA and, in fact, misconstrues the parameters of this proceeding.^{4/}

B. THE COMMISSION MUST DETERMINE THAT AVM IS AVAILABLE TO A SUBSTANTIAL PORTION OF THE PUBLIC.

3. In the Notice, the Commission asks how AVM systems should be classified -- as private or common carriers -- based on the

^{2/} [Emphasis added.] Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 396 (1993).

^{3/} Indeed, virtually all of the commenters in this proceeding did not contemplate that the term "mobile service" encompasses anything but licensed services. See, e.g., Comments of Ameritech at p.i; Comments of Pagemart, Inc. at p.16.

^{4/} It should be noted that some commenters, though not specifically suggesting that unlicensed PCS and Part 15 Services are mobile services, did propose definitions that could be interpreted to encompass these unlicensed services. See Comments of MCI at p.4; Comments of Bell Atlantic Companies at pp.3-4. Metricom requests that whatever definition is ultimately adopted for the term "mobile service", unlicensed PCS and Part 15 Services be specifically excluded. Absent such an exclusion, the Commission will be required to repeatedly address the types of issues raised by MCI and the Bell Atlantic Companies. This is particularly true in the technologically dynamic areas of PCS and Part 15.

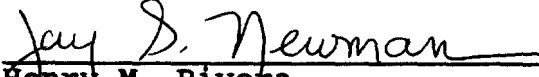
factors discussed in the Notice.^{5/} As Metricom asserted in its Comments, the Commission should determine that AVM is available to a substantial portion of the public, even though the Commission uses the words "Part 90 eligibles, individuals and the Federal government" to describe the potential users of the service. Significantly, not one commenter in this proceeding disagrees with Metricom's position. Indeed, Southwestern Bell Corporation, the only other commenter in this proceeding to address the AVM issue, also believes that AVM should be classified as a commercial mobile service.^{6/}

WHEREFORE, based on the foregoing, Metricom respectfully requests that the Commission take further action in this proceeding consistent with the views expressed in Metricom's Comments and Reply Comments filed in this proceeding.

Respectfully submitted,

METRICOM, INC.

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^{5/} Notice at footnote 51.

^{6/} See Comments of Southwestern Bell Corporation at pp.8-9 and 17. See also Comments of BellSouth at p.10 citing H.R. Conf. Rep. No. 103-213, 103d Cong., 1st Sess. at 496; and Comments of McCaw Cellular Communications, Inc. at pp.30-31.